

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE V.K.MOHANAN

FRIDAY, THE 7TH DECEMBER, 2007 / 16TH AGRAHAYANA, 1929

RFA.No. 101 of 2005(E)

(JUDGMENT AND DECREE IN OS.114/1995 of II ADDL.SUB COURT,TRIVANDRUM
DATED 16.7.2001)
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APPELLANTS/DEFENDANTS 1 & 2:

1. STATE OF KERALA REP.BY CHIEF SECRETARY
TO GOVERNMENT, SECRETARIAT, THIRUVANANTHAPURAM.
2. THE SUPERINTENDENT, MEDICAL COLLEGE
HOSPITAL, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER

RESPONDENTS/PLAINTIFF & DEFENDANT 3:

1. BALAKRISHNAN S/O. NARAYANAN,
RESIDING AT CHELLATTUKONATHU, KUNNUMPURATHU
PUTHENVEEDU VELLAIKADAVU, THIRUVANANTHAPURAM.
2. DR.CHERIAN THOMAS, ORTHOPAEDICS
DEPARTMENT, MEDICAL COLLEGE HOSPITAL,
THIRUVANANTHAPURAM.

BY ADV. SRI.G.S.REGHUNATH

THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 07/12/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.R.RAMAN & V.K.MOHANAN, JJ.

R.F.A.No. 101 of 2005

&

C.M.Appl.No.296 of 2005

Dated this the 7th day of December, 2007

J U D G M E N T

Raman,J:

This is an application for condonation of delay of 1115 days in filing the appeal and supported by an affidavit. It is averred that the case was decided by the lower court on 16.7.2001. But the copy application was given only on 11.10.2004. Thus there is inordinate delay even in applying to get a copy of the judgment. The explanation for the delay is that the concerned officers were transferred and some of them had retired from service. The questions as to who was the officer in charge of the case while the case is pending, when did he retire and why instructions were not given to the counsel or to the office for applying to get a copy thereof etc. are not stated in the affidavit. Therefore, the affidavit is too vague to be acted upon. Even if the new Superintendent took charge on 15.1.2004, there was a delay of nine months to get instructions from the Office of the Government

Pleader. It is thus stated that after receipt of a copy of the judgment, they approached the Office of the Advocate General to file an appeal. The appeal itself was filed in 2005. The delay after obtaining the copy is also not explained. Thus, we find that the long delay of filing this appeal is not at all explained satisfactorily.

2. It is a case of medical negligence. For a compound fracture, the plaintiff's right hand was amputated and it was alleged that due to the bad treatment, the condition of the plaintiff became worse and ruined his entire future. The plaintiff was a mason by profession and he is only 40 years of age having wife and three minor children. All of them were dependent on him. Due to this incident, the plaintiff became permanently disabled to do any job. The contention in the statement was that the amputation was carried on to save the life of the patient. The court below after analysing the entire evidence in the matter, found that there was no satisfactory or reliable evidence to prove

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that the third defendant/second respondent alone is responsible for the amputation of his right hand, but, there is clear evidence to prove his case that there is gross negligence on the part of the Doctors of the Medical College Hospital, Thiruvananthapuram including DW2 and the Doctors of General Hospital, Thiruvananthapuram in giving proper and effective treatment for the period from 26.12.1991 to 29.12.1991 and that it is due to that gross negligence that has caused for the formation of the disease of gasgangrene on the plaintiff which finally resulted in the amputation of his right hand. The court below also held that since a poor man like the plaintiff may not be in a position to know the name of the Doctors who have treated him during the above period, he did not make the said doctors as defendants in the suit. Following the Apex Court decision reported in **Achutrao Haribhau Khodwa and others v. State of Maharashtra and others** (AIR 1996 Supreme Court 2377) and also a

decision of this Court in **Joseph v. Dr.George Moojely** (1994(2) KLT Short Note Page 9 Case No.12), it was held that the first defendant being the State of Kerala represented by the Chief Secretary and the second defendant being the Superintendent of the Medical College Hospital, Thiruvananthapuram the most competent person who know the names of the Doctors who had treated the plaintiff and who is also the most competent person to say what exactly is the treatment given to the plaintiff, in the written statement, there is absolutely no mention regarding the aforesaid aspect. It was found that DW2 was a person who had treated the plaintiff on 27.12.1991 and the second defendant suppressed the aforesaid facts in the written statement so as to protect the Doctors who were negligent in their treatment towards the plaintiff. It is true that before attributing negligence on the part of a Doctor, care should be taken to see as to whether he has performed his duties to the best of his abilities and with due care

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and caution, since medical opinion may differ with regard to the course of action while the Doctor is attending a patient. But, if there are evidences adduced in the case, then the court is bound to take into consideration any such evidence to see whether there was any such negligence in giving proper treatment of the patient. The court below had found on evidence adduced in this case that the Doctors were grossly negligent and they have acted in a most negligent manner. It was after considering all the relevant aspects of the matter that the court below decreed the suit holding that the defendants 1 and 2 are vicariously liable for payment of compensation to the plaintiff. Compensation was also calculated after following the settled principles and after taking into account the income earned, the contribution made by the family members etc. The compensation is also calculated under different heads based on the evidence adduced in the case. In the above facts and circumstances of the

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case, even on merits, the appellants are not entitled to any reliefs.

The delay condonation petition and the appeal are accordingly dismissed.

**P.R.RAMAN,
Judge**

**V.K.MOHANAN,
Judge**

Mbs/

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V.K.MOHANAN, J.

O.P.NO. OF 2001

J U D G M E N T

DATED: -0-2007

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